

**File Name:** Nova Scotia Board of Inquiry Decision in the matter of Rev. Kenneth Gilliard and the Town of Pictou – Pre-Hearing Motion, and decision on Pre-Hearing Motion on Jurisdiction

**Date of Decisions:** January 31, 2005

**Area(s):** Provision of, or access to, services or facilities

**Characteristic(s):** Religion

**Complaint:** Reverend Gillard alleged that the Town of Pictou discriminated against him because of his religion when he was not allowed to book the Marina Stage for a religious play because it contained a “message”, offering him a different stage instead. He learned there was no application process. He held the play on the Marina Stage and was later charged under the *Public Places By-Law*, and was found not guilty of violating the By-Law. On their advice, he applied for a Special Events Permit to use the Marina Stage, but this application was denied because his performance was against the Public Places By-Law.

**Pre-Hearing Motion:** The Town of Pictou argued that it was not a “person” under the *Human Rights Act* and said the Board did not have jurisdiction to hear the matter.

**Decision on Pre-Hearing Motion:** The Board found that the Town of Pictou is an incorporated body which is a legal person and is in keeping with the case law and objectives of human rights legislation.

**Decision:** The Town of Pictou discriminated against Rev. Gilliard.

#### Intention is Irrelevant

The Town said they did not intend to discriminate. Intention is not required – even if an action is done in good faith, it can still be discrimination.

#### Exercise of Discretion

Although an official may have discretion in providing a service, they cannot do so in a way that discriminates. The Town of Pictou said that their Public Places By-Law prevented them from allowing the stage to be used for a religious message. That By-Law has considerations that must be followed in deciding whether to grant a Special Events Permit. The Board found that there the Town did not do any such assessment and found that that the main reason the Town did not let Rev. Gilliard use the Marina Stage was because his play had a religious message.

**Remedy:** The Board awarded the following remedies:

#### **Individual Remedies**

- General damages (emotional harm): \$6,000.00 plus 2.5% interest
- Contribution to costs of hearing: \$3,000 plus tax and disbursements \*

#### **Public Interest Remedies**

- Human rights education for administrative employees
- Develop anti-discrimination policy

\* Although awarded here, there is no legal authority to do so under the Nova Scotia *Human Rights Act*. The *Act* was amended in 2007 to award costs in the face of the 2005 Nova Scotia Court of Appeal decision in Johnson v. Halifax (Regional Municipality) Police Service, 2005 NSCA 70 which found no ability to award costs under the *Act* which was silent. As of 2011, the regulations for costs have not yet been drafted.